

PILLSBURY WINTHROP SHAW PITTMAN LLP  
ROXANE A. POLIDORA (CA Bar No. 135972)  
roxane.polidora@pillsburylaw.com  
JACOB R. SORENSEN (CA Bar No. 209134)  
jake.sorensen@pillsburylaw.com  
LAURA C. HURTADO (CA Bar No. 267044)  
laura.hurtado@pillsburylaw.com  
Four Embarcadero Center, 22nd Floor  
San Francisco, CA 94111  
Telephone: (415) 983-1000  
Facsimile: (415) 983-1200

Attorneys for Defendants  
KEMET CORPORATION, KEMET ELECTRONICS  
CORPORATION, TOKIN CORPORATION and  
TOKIN AMERICA, INC.

[Additional Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE CAPACITORS ANTITRUST  
LITIGATION

This Document Relates To:  
All Actions

Master File No. 3:14-cv-03264-JD  
MDL No. 2801

**DEFENDANTS' OPPOSITION TO  
FLEXTRONICS'S MOTION TO  
MODIFY PROTECTIVE ORDER**

Date: May 30, 2019  
Time: 10:00 a.m.  
Place: Courtroom 11, 19th Floor  
Hon. James Donato

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# TABLE OF CONTENTS

	Page
I. INTRODUCTION .....	1
II. STATEMENT OF FACTS .....	3
A. The <i>Capacitors</i> Litigation. ....	3
B. <i>Inductors</i> Antitrust Litigation .....	5
III. ARGUMENT .....	6
A. Flex Has Not Met its Burden to Demonstrate Both Relevance and the Discoverability of the Requested Material in the Collateral Litigation .....	6
1. Flex Has Failed to Identify the Material at Issue .....	6
2. Flex Fails to Make a Showing of Relevance or Discoverability .....	8
3. A Substantial Amount of Duplicative Discovery Will Not be Avoided .....	9
4. The Motion Seeks to Circumvent the Discovery Proceedings in the <i>Inductors</i> Litigation .....	10
B. The Requested Modification of the Protective Order Would Undermine the Reliance Interests of Defendants .....	11
C. The Requested Modification of the Protective Order Would Impinge On the Rights of Third Parties.....	12
1. <i>Capacitors</i> Defendants Not Named in <i>Inductors</i> Litigation .....	12
2. Entities Not Named as a Party to Either Litigation .....	12
D. If the Court is Inclined to Grant Flex’s Motion, it Should Impose Safeguards.....	13
IV. CONCLUSION .....	13

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# TABLE OF AUTHORITIES

Page(s)

## Cases

<i>Avago Tech. Fiber IP (Singapore) PTE., Ltd. v. IPTronics, Inc.</i> , No. C 10–02863, 2011 WL 5975243 (N.D. Cal. Nov. 29, 2001) .....	7
<i>Beckman Industries, Inc. v. Int’l Ins. Co.</i> , 966 F.2d 470 (9th Cir. 1992) .....	6, 7
<i>Foltz v. State Farm Mut. Auto. Ins. Co.</i> , 331 F. 3d 1122 (9th Cir. 2003) .....	passim
<i>In re Static Random Access Memory (SRAM) Antitrust Litig.</i> , No. 07-MD-01819 CW, 2011 WL 5193479 (N.D. Cal. Nov. 1, 2011).....	7, 11
<i>Starline Windows Inc., et al v. Quanex Building Products Corp.</i> , No. C 15-cv-1282 WVG, 2016 WL 4485559 (S.D. Cal. June 10, 2016).....	9, 10
<i>United Nuclear Corp. v. Cranford Ins. Co.</i> , 905 F.2d 1424 (10th Cir. 1990) .....	12

## Rules and Regulations

Federal Rules of Civil Procedure, Rule 30(b)(6) .....	10
--	----

1 Defendants KEMET Corporation, KEMET Electronics Corporation, TOKIN  
 2 Corporation and TOKIN America, Inc. (collectively “TOKIN”), Panasonic Corporation,  
 3 Panasonic Corporation of North America, SANYO Electric Co., Ltd., SANYO North  
 4 America Corporation, AVX Corporation, Elna Co., Ltd, Elna America, Inc., Hitachi  
 5 Chemical Co., Ltd., Hitachi AIC Inc., Hitachi Chemical Co. America, Ltd., Holy Stone  
 6 Enterprise Co., Ltd., Milestone Global Technology, Inc., Matsuo Electric Co., Ltd.,  
 7 Nichicon Corporation, Nichicon (America) Corporation, Nippon Chemi-Con Corporation,  
 8 United Chemi-Con, Rubycon Corporation, Rubycon America Inc., Shinyei Kaisha, Shinyei  
 9 Technology Co., Ltd., Shinyei Capacitor Co., Ltd., Shinyei Corporation of America, Inc.,  
 10 Taitso Corporation, Taitso America, Inc., and Vishay Polytech Co., Ltd. oppose the Motion  
 11 for Limited Modification of the February 17, 2005 Protective Order (“Motion”) filed by  
 12 Plaintiff Flextronics International USA, Inc. (“Flex”) on April 23, 2019 (MDL Dkt. No.  
 13 536-4).

#### 14 **I. INTRODUCTION**

15 This Motion is nothing more than an attempted end run around the discovery  
 16 proceedings in *Flextronics International USA, Inc. v. Murata Manufacturing Co., Ltd., et*  
 17 *al.*, Case No. 5:19-cv-00078 EJD (N.D. Cal.) (“Flex *Inductors* Action”) and the related  
 18 class actions (collectively the “*Inductors* Litigation”). The Flex *Inductors* Action  
 19 commenced only **four months** ago. By contrast, the present multi-district litigation (the  
 20 “*Capacitors* Litigation”) commenced nearly **five years** ago and now consists of two class  
 21 actions, one on behalf of direct purchasers and the other on behalf of indirect purchasers,  
 22 and several direct actions brought by opt-out plaintiffs including Flex. Flex seeks to  
 23 modify the stipulated protective order here to allow Flex and “other litigants” to import all  
 24 discovery material from this Litigation that “referenc[es] inductors” into the *Inductors*  
 25 Litigation, without first attempting to take discovery in the *Inductors* Litigation (and  
 26 apparently without any notice to the producing parties as to exactly which of their  
 27 documents will be used). In contrast to the cases it cites, Flex does not contend that the  
 28 alleged conspiracy to fix inductor prices was the same as the alleged conspiracy to fix

1 capacitor prices; and it offers no other explanation why, merely because discovery material  
2 in the *Capacitors* Litigation “references inductors,” that material would tend to prove or  
3 disprove the plaintiffs’ allegations in the *Inductors* Litigation. Indeed, this Court earlier  
4 refused to relate one of the *Inductors* putative class actions to this Litigation.

5       There are only two defendant groups in the *Inductors* Litigation that are or were also  
6 defendants in this case: the TOKIN defendants and the Panasonic defendants. Subject to  
7 the ordinary discovery rules and procedures established in the *Inductors* Litigation, Flex  
8 and the class plaintiffs are free to seek discovery in those cases from the parties to this case.  
9 But Flex apparently wishes to avoid being subject to the case management of another judge  
10 with respect to discovery scheduling and scope. Instead, Flex (and class plaintiffs) seek  
11 one-stop shopping for discovery to be used in the *Inductors* Litigation without any  
12 oversight by the *Inductors* court.

13       Further, Flex’s claim that modification of the protective order will avoid duplicative  
14 discovery and thereby save time and reduce costs is unsupported. Flex has identified no  
15 duplicative discovery that would be avoided if its Motion were granted. For example, Flex  
16 has not identified any depositions, subpoenas, or document requests that it will forego if the  
17 Court grants its Motion. That is probably because Flex has no intention of limiting its  
18 discovery in the *Inductors* Litigation in any way whatsoever. Rather, Flex seeks an  
19 advantage for itself and class plaintiffs in the *Inductors* Litigation by obtaining and using  
20 without any vetting a vast pool of documents produced in this Litigation. As Flex knows, a  
21 large number of the documents were produced in this action by entities that are not named  
22 as defendants in the *Inductors* Litigation and are therefore ill-positioned to protect their  
23 interests. Indeed, all of the producing parties – including many third parties not involved in  
24 either the *Inductors* Litigation or in this case – produced documents in reliance on the  
25 existing Protective Order. It would not be fair to change those rules now.

26       This Court should not condone Flex’s attempt to subvert the ordinary discovery  
27 procedures and should deny its Motion.

28

## 1 II. STATEMENT OF FACTS

### 2 A. The *Capacitors* Litigation.

3 The *Capacitors* Litigation arose out of government investigations around the world  
 4 that began in or around April 2014. Consol. Third Am. Class Action Compl. and Compl. of  
 5 Flextronics International USA, Inc. Dkt. No. 1831, ¶ 372. The Direct Purchaser Plaintiffs  
 6 (“DPPs”) and the Indirect Purchaser Plaintiffs (“IPPs”) filed consolidated complaints on  
 7 November 14, 2014. Dkt. Nos. 345 and 347. Flex filed its complaint on June 5, 2015,  
 8 which was consolidated with the DPPs’ complaint on August 4, 2015. Dkt. No. 826. None  
 9 of the *Capacitors* complaints contained any allegations about inductors.

10 The IPPs alleged two separate conspiracies based in Japan: the “*electrolytic*  
 11 *capacitor cartel*” and the “*film capacitor cartel*.” See Indirect Purchaser Pls.’ Fifth Consol.  
 12 Compl. Dkt. No. 1589, ¶ 139 (emphasis in original). Not all defendants are alleged to have  
 13 participated in both. The electrolytic capacitor cartel allegedly operated between April  
 14 2002 and December 2013 and included group meetings – known as “ECC,” “TC,”  
 15 “KCC/Hananoki,” “ATC,” and “MK” meetings – where members allegedly fixed the prices  
 16 of tantalum and aluminum electrolytic capacitors. *Id.* ¶¶ 140-147. Participants in the film  
 17 capacitor cartel allegedly fixed the prices of film capacitors between 1999 and 2009,  
 18 including at in-person gatherings referred to as “JFC,” “KL,” and “FF” meetings. *Id.*  
 19 ¶¶ 166-167. The IPP complaint named 28 defendants comprising 16 corporate defendant  
 20 families.<sup>1</sup> The IPP complaint contained no allegations about inductors.

21 The DPPs alleged a single Asia-based conspiracy to fix the prices of film, tantalum,  
 22 and aluminum electrolytic capacitors beginning on January 1, 2002 and continuing to  
 23

---

24 <sup>1</sup> Elna Co., Ltd.; Elna America Inc.; Hitachi Chemical Co., Ltd.; Hitachi Chemical Co.  
 25 America, Ltd.; Hitachi AIC Inc.; Matsuo Electric Co., Ltd.; Nippon Chemi-Con Corp.;  
 26 United Chemi-Con, Inc.; NEC TOKIN Corp.; NEC TOKIN America Inc.; Nichicon Corp.;  
 27 Nichicon America Corp.; Nissei Electric Co. Ltd.; Nitsuko Electronics Corp.; Okaya  
 28 Electric Industries Co., Ltd.; Panasonic Corp.; Panasonic Corp. of North America; Rubycon  
 Corp.; Rubycon America Inc.; SANYO Electric Co., Ltd.; SANYO Electronic Device  
 (U.S.A.) Corp.; Shinyei Technology Co., Ltd.; Soshin Electric Co., Ltd.; Taitso Corp.; and  
 Toshin Kogyo Co., Ltd.

present day. *See* Consol. Third Am. Class Action Compl. and Compl. of Flextronics, Dkt. 1831, ¶ 1. The DPP complaint named 42 defendants comprising 22 corporate defendant families.<sup>2</sup> Flex sued a subset of those defendants. The DPP and Flex complaint contained no allegations about inductors.

Discovery in this Litigation took place over the course of more than three years. Defendants produced more than 13 million documents, including documents from centralized and custodial files and transaction data. DPPs propounded more than 48 multi-part interrogatories to defendants collectively. IPPs propounded more than 12 multi-part interrogatories on defendants collectively. Flex propounded more than 20 multi-part interrogatories on defendants collectively.

DPPs, IPPs, and Flex collectively took more than 75 depositions of party witnesses. There has also been extensive expert discovery, which is on-going. As noted above, TOKIN and Panasonic are the only defendants in both cases. TOKIN has produced six witnesses for full-day depositions. Panasonic has produced 15 witness for 30 days of depositions.

There has also been extensive third-party discovery. Plaintiffs and defendants together have subpoenaed documents and/or depositions from over 10 third parties, including Allied Electronics, Inc., Cornell Dubilier, EPCOS, Ernst & Young, Fry's Electronics, Inc., JEITA, Mouser Electronics, Inc., Newark Element 14, Sager Electronics,

---

<sup>2</sup> Panasonic Corporation; Panasonic Corporation of North America; Sanyo Electric Co., Ltd.; Sanyo North America Corporation; NEC Tokin Corp.; NEC TOKIN America Inc.; KEMET Corporation; KEMET Electronics Corporation; Nippon Chemi-Con; United Chemi-Con, Inc.; Hitachi Chemical Co., Ltd.; Hitachi AIC Inc.; Hitachi Chemical Co. America, Ltd.; Fujitsu Ltd.; Nichicon Corp.; Nichicon (America) Corp.; AVX Corp.; Rubycon Corp.; ELNA Co., Ltd.; ELNA America Inc.; Matsuo Electric Co., Ltd.; TOSHIN KOGYO Co., Ltd.; Holy Stone Enterprise Co., Ltd.; Milestone Global Technology, Inc.; Vishay Intertechnology, Inc.; ROHM Co., Ltd.; ROHM Semiconductor U.S.A., LLC; Okaya Electric Industries, Co., Ltd.; Okaya Electric America Inc.; Taitsu Corp.; Taitsu America Inc.; Shinyei Kaisha; Shinyei Technology Co., Ltd.; Shinyei Capacitor Co., Ltd.; Shinyei America, Inc.; Nitsuko Electronics Corp; Nissei Electric Co., Ltd.; Soshin Electric Co., Ltd.; Soshin Electronics of America Inc.; Shizuki Electric Co., LTD.; American Shizuki Corporation.

1 and TTI, Inc.

2 **B. Inductors Antitrust Litigation**

3 On January 9, 2018, Dependable Component Supply Corporation filed an action  
4 (No. 18-cv-00198) seeking to represent a putative class of direct purchasers of inductors.

5 This was the first-filed action alleging antitrust violations with respect to the sale of  
6 inductors. Five other plaintiffs – Powerweb Inc., Lifetime Service Center, Inc., Cambridge  
7 Capital Corporation, Five Rivers, and Inductors Inc. – also filed putative class actions  
8 seeking to represent direct purchasers of inductors. Judge Davila ruled that those actions  
9 are related to each other. Dkt. Nos. 15, 19, 52, 80, 112 in *In Re Inductors Antitrust*  
10 *Litigation, et al.*, 18-cv-00198-EJD (the “*Inductors Class Action*”).

11 On February 8, 2018, Five Rivers moved to relate its case with the *Capacitors*  
12 *Litigation*. This Court refused to do so. Dkt. No. 2081. On April 27, 2018, the *Inductors*  
13 cases were consolidated, and the consolidated complaint was filed on July 2, 2018.  
14 *Inductors Class Action*, Dkt. Nos. 124, 184.

15 On January 4, 2019, Flex filed a complaint against 20 defendants belonging to seven  
16 corporate families, alleging violations of the antitrust laws with respect to the sale of  
17 inductors.<sup>3</sup> Of the seven defendant families named in the *Capacitors Litigation*, TOKIN  
18 and Panasonic are the only two who are also named in either the Flex *Inductors Action* or  
19 the *Inductors Class Action*, both of which have been related to each other. *Inductors Class*  
20 *Action*, Dkt. No. 273.

21 Discovery in the *Inductors Class Action* has been focused and narrow and  
22 commenced less than one year ago. Flex has not propounded any discovery in the Flex  
23 *Inductors Action*.

---

24  
25 <sup>3</sup>Murata Manufacturing Co., Ltd.; Murata Electronics North America, Inc.; Murata Power  
26 Solutions, Inc.; Panasonic Corporation; Panasonic Corporation Of North America;  
27 Panasonic Electronic Devices Co. Ltd; Panasonic Industrial Devices Corporation Of  
28 America; Sagami Elec Co., Ltd.; Sagami America, Ltd.; Sumida Corporation; Sumida  
Electric Co., Ltd.; Sumida America Components, Inc.; Taiyo Yuden Co., Ltd.; Taiyo Yuden  
(U.S.A.) Inc.; TDK Corporation; TDK-EPC Corporation; TDK Corporation of America;  
TDK U.S.A. Corporation; TOKIN Corporation; and TOKIN America, Inc.



### 1 **III. ARGUMENT**

#### 2 **A. Flex Has Not Met its Burden to Demonstrate Both Relevance and the** 3 **Discoverability of the Requested Material in the Collateral Litigation**

4 In the Ninth Circuit, “a court should not grant a collateral litigant’s request [to  
5 modify a protective order] automatically.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.  
6 3d 1122, 1132 (9th Cir. 2003). Rather, the court that entered the protective order must  
7 “satisfy itself that the protected discovery is sufficiently relevant to the collateral litigation  
8 that a substantial amount of duplicative discovery will be avoided by modifying the  
9 protective order.” *Id.* at 1132. “[T]he collateral litigant must demonstrate [1] the relevance  
10 of the protected discovery to the collateral proceedings and [2] its general discoverability  
11 therein.” *Id.* Flex has not and cannot make this showing.<sup>4</sup> Flex does not even address the  
12 discoverability prong in its Motion. Moreover, even if Flex had established that documents  
13 produced in the *Capacitors* Litigation were relevant, in a general sense, to the *Inductors*  
14 Litigation (which it does not), it has done nothing to show that a substantial amount of  
15 duplicative discovery will be avoided by the requested modification.

#### 16 **1. Flex Has Failed to Identify the Material at Issue**

17 A threshold problem is that Flex does not identify the material or documents that it  
18 seeks to carve out from the protective order’s restriction on use of “Protected Material.”  
19 Instead, Flex asks this Court to modify the protective order to permit “documents  
20 referencing inductors” to be used in the Flex *Inductors* Action “and related  
21  
22

---

23 <sup>4</sup> Flex asserts that “[t]he party opposing modification bears the burden of showing good  
24 cause for continuing the protection,” citing *Beckman Industries, Inc. v. Int’l Ins. Co.*, 966  
25 F.2d 470, 472 (9th Cir. 1992) to support this point. Mot. at 4. First, *Beckman* does not so  
26 hold. *Beckman*’s limited holding is that the balance of the interests in that case – including  
27 the limited nature of the request (for six deposition transcripts) – weighed in favor of  
28 modifying the protective order, absent some further showing by the party opposing  
modification. Regardless, Defendants cannot be expected to show “good cause” where  
Flex has failed to identify with particularity the documents impacted by its proposed  
modification to the protective order.

proceedings . . . .” Mot. at 5;<sup>5</sup> *see Avago Tech. Fiber IP (Singapore) PTE., Ltd. v. IPTronics, Inc.*, No. C 10–02863, 2011 WL 5975243 EJD (PSG) (N.D. Cal. Nov. 29, 2001) (denying motion to modify protective order, in part, because the movant had not identified with any particularity the specific documents at issue).

The requested modification is so broad it is unclear what discovery material would be impacted. None of the cases cited by Flex appears to implicate comparably broad categories or large volumes of documents.<sup>6</sup> Flex does not explain how it plans to identify the material that “referenc[es] inductors” or how any of the defendants or non-parties that produced “Protected Material” in the *Capacitors* Litigation will know which of that material Flex seeks to import into the *Inductors* Litigation. More than 13 million documents have been produced in the *Capacitors* Litigation and more than 75 depositions have been taken, and there is no dispute that “[t]he vast majority of this material has been marked Confidential.” Mot. at 4. Flex ignores the volume of documents that could be swept up by its proposed modification to the protective order in favor of conclusory assertions that an unknown universe of documents is “sufficiently relevant” to the *Inductors* litigation.

---

<sup>5</sup> Flex never explicitly states that the “related proceedings” include the *Inductors* Class Action and later-filed related cases. In fact, Flex appears deliberately to have downplayed the fact that the requested modification of the protective order would greatly expand access to highly confidential and competitively sensitive information to the class plaintiffs and any other plaintiffs that may file inductors actions in the future.

<sup>6</sup> *See, e.g., Olympic Refining Co. v. Carter*, 332 F.2d 260, 262 (9th Cir. 1964) (intervenor sought access to a limited set of documents filed under seal); *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 471 (9th Cir. 1992) (intervenor sought access to six deposition transcripts). In *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, where “movants fail to set forth any particularized categories of documents being sought, but their request at times can be read to imply that movants are seeking access to *all* discovery produced in the underlying litigation in its entirety,” the Court granted the modification to the protective order only to the extent that “no party may prevent movants from obtaining access as a matter of course for use in the collateral actions.” No. M 02-1486 PJH, 2008 WL 4191780, at \*2-3 (N.D. Cal. Sept. 10, 2008) (emphasis in original). The Court further ruled that “[a]ny such access is permissible, however, **only after the collateral courts have decided upon the proper scope of discovery.**” *Id.* (emphasis added).

## 2. Flex Fails to Make a Showing of Relevance or Discoverability

Flex’s argument with respect to relevance boils down to assertions that the *Inductors* Litigation and the *Capacitors* Litigation both involve electrical components, and that the two common sets of defendants (TOKIN and Panasonic) were supposedly involved in a conspiracy to fix the price of inductors “similar to the conspiracy alleged in this litigation.” Mot. at 7.

Relevance hinges on “the degree of overlap in facts, parties, and issues between the suit covered by the protective order and the collateral proceedings.” *Foltz*, 331 F.3d at 1132. In contrast to the cases cited by Flex in support of its motion, the two alleged conspiracies are not the same.<sup>7</sup> The alleged conspiracies involve different products that are bought and sold in separate markets. Inductors are designed, manufactured, and sold to unique customer specifications, and those unique sales transactions are not alleged to have anything to do with the design, manufacture, or sale of capacitors. In addition, only TOKIN and Panasonic are named in both the *Inductors* and *Capacitors* Litigations. The remaining 20 defendant families named in the *Capacitors* Litigation are not defendants in the Flex *Inductors* Action or the *Inductors* Class Action. Flex has not explained why those defendants’ documents would be relevant to conspiracies in which they are not alleged to have participated, not to mention those of the many third parties that produced documents in *Capacitors*.

Further, the relevance or irrelevance of the four documents cherry-picked by Flex and described in their Motion (at p. 7) do not provide a basis to modify the protective order as to, potentially, millions of other documents and other materials produced in this case.

---

<sup>7</sup> In *Kraszewski v. State Farm Gen. Ins. Co.*, the collateral litigation was about the **same** allegedly discriminatory policies and practices as the primary litigation. 139 F.R.D. 156, 160 (N.D. Cal. 1991). In *DRAM*, the collateral litigation was about “the **same** illegal price-fixing conspiracy” as the primary litigation. 2008 WL 4191780, at \*2 (emphasis added). Here, the alleged conspiracy in the *Inductors* Litigation is separate and distinct from the conspiracy alleged in the *Capacitors* Litigation.

1                               **3.     A Substantial Amount of Duplicative Discovery Will Not be**  
 2                               **Avoided**

3               Flex claims that a substantial duplication of effort can be avoided by allowing it,  
 4     and unspecified other litigants, to access and use the discovery record from this Litigation  
 5     in the *Inductors* Litigation. Yet, Flex does not identify any duplicative discovery that will  
 6     be avoided if the protective order is modified, such as corporate or individual depositions or  
 7     document requests Flex will forego if its Motion is granted.<sup>8</sup>

8               Moreover, Flex has not yet sought to take any discovery whatsoever in the *Inductors*  
 9     Litigation. Subject to the ordinary discovery rules and procedures established in the  
 10    *Inductors* Litigation, Flex is free to seek discovery in that case from the parties to this case.  
 11    Moreover, the protective order provides Flex with the ability to request information  
 12    designated under it through discovery in the collateral action: Paragraph 8 establishes a  
 13    process by which Flex may seek discovery of confidential information disclosed by one  
 14    party from another party. Dkt. No. 563 at 10. *See Starline Windows Inc., et al v. Quanex*  
 15    *Building Products Corp.*, No. C 15-cv-1282 WVG, 2016 WL 4485559 at \*4 (S.D. Cal. June  
 16    10, 2016) (denying motion to intervene to modify protective order where “[n]othing in the  
 17    [stipulated protective order] prevents the [movants] from obtaining discovery in their state  
 18    cases” and where the “SPO outlines the process by which the [movants] may seek  
 19    discovery information that is designated as confidential in this action.”). The *Capacitors*  
 20    protective order also creates a process for challenging confidentiality designations.  
 21    Modification of the protective order is not necessary or warranted.

22  
 23  
 24               

---

  
 25               <sup>8</sup> In *DRAM*, the court granted the motion to modify the protective order in part because “a  
 26               significant amount of duplicative discovery may be avoided” because, as noted above, the  
 27               cases involved “the *same* illegal price-fixing conspiracy.” 2008 WL 4191780, at \*2 (N.D.  
 28               Cal. Sept. 10, 2008) (emphasis added). Likewise, in *Kraszewski*, the court held that  
               modifying the protective order would allow the parties to avoid “promulgat[ing] discovery  
               requests.” 139 F.R.D. at 160. Plaintiffs have not identified any such efficiency gains that  
               will be obtained by modifying the protective order in this case.

1                               **4.       The Motion Seeks to Circumvent the Discovery Proceedings in**  
 2                               **the *Inductors* Litigation**

3               “Requiring a showing of relevance prevents collateral litigants from gaining access  
 4 to discovery materials merely to subvert limitations on discovery in another proceeding.”  
 5 *Foltz*, 331 F.3d at 1132. Flex and the class plaintiffs have no right to obtain and use  
 6 discovery materials that are immune from eventual discovery in the *Inductors* Litigation.  
 7 Discovery in the *Inductors* Class Action is proceeding in phases and in a measured fashion,  
 8 particularly given that the Court has not yet ruled on the pending motion to dismiss. The  
 9 parties in the Flex *Inductors* Action stipulated that defendants’ response to the complaint  
 10 shall not be due until 60 days after the Court’s ruling on a motion to dismiss in the  
 11 *Inductors* Class Action. Flex *Inductors* Action, Dkt. No. 27 at 2. Further, the *Inductors*  
 12 class action plaintiffs agreed to “stay depositions, except for Federal Rule of Civil  
 13 Procedure 30(b)(6) depositions concerning certain matters, and any discovery concerning  
 14 grand jury proceedings” until June 18, 2019. *See Inductors* Class Action, Dkt. No. 260 at 1.  
 15 The requested modification to the protective order would potentially provide the class  
 16 plaintiffs access to discovery that they agreed they would not seek at this time.

17               As the court bluntly stated in *Starline*, in which it denied a motion to allow movant  
 18 to intervene to modify a protective order: “If the [movant] wants discovery to prosecute  
 19 their cases . . . they should conduct discovery the good old fashioned way – propound it on  
 20 the parties in the [other] case[.]” 2016 WL 4485559, at \*4. Here, it appears that Flex seeks  
 21 to avoid any adverse discoverability determinations that the *Inductors* court might make  
 22 and import wholesale all discovery from this Litigation into the *Inductors* Litigation before  
 23 any such determinations can be made. That is improper.

24               In short, Flex has not met its burden to demonstrate the relevance of the materials it  
 25 seeks to carve out from the protective order, and it has not even attempted to address the  
 26 discoverability of those materials in the collateral litigation.

1           **B.       The Requested Modification of the Protective Order Would Undermine**  
 2           **the Reliance Interests of Defendants**

3           In considering the request to modify, the Court must also “weigh the countervailing  
 4 reliance interest of the party opposing modification against the policy of avoiding  
 5 duplicative discovery.” *Foltz*, 331 F.3d at 1133. As stated, no showing has been made that  
 6 a substantial amount of discovery will be avoided if the Court grants the requested  
 7 modification to the protective order. Yet, modification of the protective order would  
 8 undermine the reliance interest of defendants.

9           Defendants carefully negotiated the terms of the protective order in this action  
 10 before any significant discovery commenced. They then produced vast amounts of highly  
 11 confidential and competitively sensitive information in reliance on the terms of the  
 12 protective order, never expecting that their documents, data, and information might be  
 13 dumped wholesale into other litigation.

14           If granted, the Motion would undermine the settled expectations about  
 15 confidentiality under which the parties in this action have been litigating for years.  
 16 Protective orders “reduc[e] conflict over discovery and facilitat[e] the flow of information  
 17 through discovery . . . [C]hanging the ground rules later is to be avoided because  
 18 protective orders that cannot be relied upon will not foster cooperation through discovery.”  
 19 *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 07-MD-01819 CW, 2011  
 20 WL 5193479, at \*6 (N.D. Cal. Nov. 1, 2011). The protective order in *Capacitors* applies  
 21 only to material the parties affirmatively designated as confidential or highly confidential  
 22 and creates a process for challenging overbroad or otherwise improper designations. The  
 23 parties relied on the protective order when they produced sensitive information, served  
 24 confidential discovery responses, and provided confidential deposition testimony.<sup>9</sup> The  
 25

---

26           <sup>9</sup> Flex contends that defendants’ reliance interest is diminished because the protective order  
 27 is a “blanket order.” Mot. at 7-8. Not so. The order itself provides: “The parties  
 28 acknowledge that this Order **does not confer blanket protections** on all disclosures or  
 responses to discovery and that the protection it affords from public disclosure and use

(continued...)

prejudice to defendants would be compounded because Flex’s proposed amendment to the protective order is so sweeping: it would give all parties to the Flex *Inductors* Action and related proceedings broad and vaguely specified access to confidential material in the *Capacitors* Litigation, regardless of whether it is relevant to the collateral proceedings.

**C. The Requested Modification of the Protective Order Would Impinge On the Rights of Third Parties**

**1. Capacitors Defendants Not Named in Inductors Litigation**

Modification of the protective order would affect not only the TOKIN and Panasonic defendants but also several entities that are current or former defendants in this Litigation but are not named as defendants in the *Inductors* Litigation. These entities produced their commercially sensitive sales data and pricing information, strategic information, technical information, and other confidential information in reliance on the promise of the parties and the Court that their rights would be protected and their data secure. One factor that may weigh in favor of granting a request to modify a protective order is that the parties in the collateral action can raise specific relevance and privilege objections in that action. *Foltz*, 331 F.3d at 1133; *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1428-1429 (10th Cir. 1990) (“because defendants . . . are parties to the collateral suits, they have both the interest and standing to raise in those courts any relevancy or privilege objections to the production of any materials.”). As noted above, only two of the *Capacitors* defendants are parties in the *Inductors* Litigation – the other 20 defendant families are not. These 20 defendant families will have little if any ability to police the use of their confidential documents in the *Inductors* Litigation.

**2. Entities Not Named as a Party to Either Litigation**

In addition, third parties who produced documents and provided deposition testimony in the *Capacitors* Litigation but who were never part of the *Capacitors* Litigation

---

(...continued)

extends only to the information or items that are entitled to confidential treatment under the applicable legal principles.” Dkt. No. 563 at 1 (emphasis added).



and are not a part of the *Inductors* Litigation may also be impacted by the requested modification. More than 10 entities fall into this category. They each provided discovery in the *Capacitors* Litigation pursuant to a third-party subpoena and in reliance on the existing Protective Order. To our knowledge, none of those third parties have been given notice of the pending Motion and the risk to their confidential information. They, too, will be similarly ill-positioned to protect their rights and interests in the *Inductors* Litigation.

**D. If the Court is Inclined to Grant Flex's Motion, it Should Impose Safeguards**

Flex fails to identify with any specificity the materials from this action that will be impacted by its requested modification of the protective order. That is reason enough to deny the Motion. But should the Court grant the Motion, it should, at a minimum, require that Flex identify to the producing parties by Bates number each document that Flex claims falls within the sweep of its proposed modification so that the producing parties are on notice of the universe of documents at issue and may take all appropriate steps to attempt to preserve their rights with respect to those documents.

**IV. CONCLUSION**

For the foregoing reasons, Flex's motion to modify the protective order should be denied

Dated: May 7, 2019.

PILLSBURY WINTHROP SHAW PITTMAN LLP  
 ROXANE A. POLIDORA  
 JACOB R. SORENSEN  
 LAURA C. HURTADO  
 Four Embarcadero Center, 22nd Floor  
 San Francisco, CA 94111

By: /s/ Laura C. Hurtado

Attorneys for Defendants  
 KEMET CORPORATION, KEMET ELECTRONICS  
 CORPORATION, TOKIN CORPORATION and  
 TOKIN AMERICA, INC.



1 Dated: May 7, 2019.

2 WINSTON & STRAWN LLP  
3 Jeffrey Kessler (pro hac vice)  
4 A. Paul Victor (pro hac vice)  
5 Molly Donovan (pro hac vice)  
6 Martin C. Geagan (pro hac vice)  
7 200 Park Avenue  
8 New York, NY 10166-4193  
9 Telephone: (212) 294-6700  
Facsimile: (212) 294-4700  
jkessler@winston.com  
pvictor@winston.com  
mmdonovan@winston.com  
mgeagan@winston.com

10 WINSTON & STRAWN LLP  
11 Ian L. Papendick (SBN 275648)  
12 101 California Street  
13 San Francisco, CA 94111  
14 Telephone: (415) 591-1000  
Facsimile: (415) 591-1400  
ipapendick@winston.com

15 By: /s/ Jeffrey L. Kessler

16 Attorneys for Defendants  
17 PANASONIC CORPORATION, PANASONIC  
18 CORPORATION OF NORTH AMERICA, SANYO  
19 ELECTRIC CO., LTD., and SANYO NORTH  
20 AMERICA CORPORATION  
21  
22  
23  
24  
25  
26  
27  
28

1 Dated: May 7, 2019.

2 MINTZ LEVIN COHN FERRIS GLOVSKY AND  
3 POPEO P.C.

4 Bruce D. Sokler

5 Robert G. Kidwell

6 701 Pennsylvania Avenue NW, Suite 900

7 Washington, DC 20004

8 bdsokler@mintz.com

9 RGKidwell@mintz.com

10 MINTZ LEVIN COHN FERRIS GLOVSKY AND  
11 POPEO P.C.

12 Evan S. Nadel

13 44 Montgomery Street, 36th Floor

14 San Francisco, CA 94104

15 enadel@mintz.com

16 By: /s/ Bruce D. Sokler

17 Attorneys for Defendant  
18 AVX CORPORATION  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Dated: May 7, 2019.

2 WILMER CUTLER PICKERING HALE AND  
3 DORR LLP

4 Heather S. Nyong'o  
5 Chris Johnstone  
6 950 Page Mill Road  
7 Palo Alto, CA 94304  
8 Heather.Nyongo@wilmerhale.com  
9 Chris.Johnstone@wilmerhale.com

10 WILMER CUTLER PICKERING HALE AND DORR  
11 LLP

12 Thomas Mueller (*pro hac vice*)  
13 Christopher Megaw (*pro hac vice*)  
14 Lauren Ige (*pro hac vice*)  
15 1875 Pennsylvania Ave NW  
16 Washington, DC 20006  
17 Thomas.Mueller@wilmerhale.com  
18 Chris.Megaw@wilmerhale.com  
19 Lauren.Ige@wilmerhale.com

20 WILMER CUTLER PICKERING HALE AND DORR  
21 LLP

22 Margaret O'Grady (*pro hac vice*)  
23 60 State Street  
24 Boston, MA 02109  
25 Margaret.OGrady@wilmerhale.com

26 By:                     /s/ Heather S. Nyong'o                    

27 Attorneys for Defendants  
28 ELNA CO., LTD. and ELNA AMERICA, INC.

1 Dated: May 7, 2019.

2 JONES DAY  
3 Jeffrey A. LeVee  
4 Eric P. Enson  
5 Kelly M. Ozurovich  
6 555 South Flower Street, 50th Floor  
7 Los Angeles, CA 90071  
8 jlevee@jonesday.com  
9 epenson@jonesday.com  
10 kozurovich@jonesday.com

11 By: /s/ Jeffrey A. LeVee

12 Attorneys for Defendants  
13 HOLY STONE ENTERPRISE CO, LTD.,  
14 MILESTONE GLOBAL TECHNOLOGY, INC., and  
15 VISHAY POLYTECH CO., LTD.

16 Dated: May 7, 2019.

17 K&L GATES LLP  
18 Michael E. Martinez  
19 Lauren N. Donahue  
20 Steven M. Kowal  
21 Brian J. Smith  
22 70 W. Madison Street, Suite 3100  
23 Chicago, IL 60602  
24 michael.martinez@klgates.com  
25 lauren.donahue@klgates.com  
26 steven.kowal@klgates.com  
27 brian.j.smith@klgates.com

28 By: /s/ Michael Martinez

Attorneys for Defendants  
NICHICON CORPORATION and NICHICON  
(AMERICA) CORPORATION

1 Dated: May 7, 2019.

2 PAUL, WEISS, RIFKIND, WHARTON &  
3 GARRISON LLP

4 Charles F. Rule

5 Joseph J. Bial

6 2001 K Street, NW

7 Washington, DC 20006-1047

8 rrule@paulweiss.com

9 jbial@paulweiss.com

10 KAUFHOLD GASKIN LLP

11 Steven Shea Kaufhold

12 388 Market St, Suite 1300

13 San Francisco, CA 94111

14 skaufhold@kaufholdgaskin.com

15 By: /s/ Joseph J. Bial

16 Attorneys for Defendants

17 NIPPON CHEMI-CON CORPORATION and UNITED  
18 CHEMI-CON, INC.

1 Dated: May 7, 2019.

2 SHEARMAN & STERLING LLP  
3 Djordje Petkoski (admitted pro hac vice)  
4 David A. Higbee (admitted pro hac vice)  
5 Ryan Shores (admitted pro hac vice)  
6 Mark G. Weiss (admitted pro hac vice)  
7 Deke Shearon (admitted pro hac vice)  
8 401 9th St., NW  
9 Washington, D.C. 20004  
10 djordje.petkoski@shearman.com  
11 david.higbee@shearman.com  
12 ryan.shores@shearman.com  
13 mark.weiss@shearman.com  
14 deke.shearon@shearman.com

10 SHEARMAN & STERLING LLP  
11 John Cove  
12 535 Mission Street, 25th Floor  
13 San Francisco, California 94105  
14 john.cove@shearman.com

15 By:                   /s/ Djordje Petkoski                  

16 Attorneys for Defendants  
17 RUBYCON CORPORATION and RUBYCON  
18 AMERICA INC.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Dated: May 7, 2019.

2 DENTONS US LLP  
3 Gaspare J. Bono  
4 Claire Maddox  
5 Leslie Barry  
6 1900 K Street, NW  
7 Washington, DC 20006  
8 Email: gap.bono@dentons.com  
9 claire.maddox@dentons.com  
10 leslie.barry@dentons.com

11 DENTONS US LLP  
12 Andrew S. Azarmi  
13 One Market Plaza, Spear Tower, 24th Floor  
14 San Francisco, California 94105  
15 Email: andrew.azarmi@dentons.com

16 By: /s/ Gaspare J. Bono

17 Attorneys for Defendants  
18 SHINYEI KAISHA, SHINYEI TECHNOLOGY CO.,  
19 LTD., SHINYEI CAPACITOR CO., LTD. and  
20 SHINYEI CORPORATION OF AMERICA, INC.

21 Dated: May 7, 2019.

22 BONA LAW PC  
23 Jarod M. Bona  
24 Aaron R. Gott  
25 4275 Executive Square, Suite 200  
26 La Jolla, CA 92037  
27 Email: jarod.bona@bonalawpc.com  
28 aaron.gott@bonalawpc.com

By: /s/ Jarod M. Bona

Attorneys for Defendants  
TAITSU CORPORATION and TAITSU AMERICA,  
INC.

1 Dated: May 7, 2019.

2 DENTONS US LLP  
3 Bonnie Lau  
4 One Market Plaza, 24th Fl.  
5 San Francisco, CA 94105  
6 Tel: (415) 882-5000  
7 bonnie.lau@dentons.com

8 By: /s/ Bonnie Lau

9 Attorneys for Defendants  
10 MATSUO ELECTRIC CO., LTD.

11 WILSON SONSINI GOODRICH & ROSATI  
12 Chul Pak  
13 Jeffrey C. Bank  
14 Justin A. Cohen  
15 1301 Avenue of the Americas, 40th Floor  
16 New York, New York 10019  
17 Telephone: (212) 497-7758  
18 Facsimile: (212) 999-5899

19 WILSON SONSINI GOODRICH & ROSATI  
20 Jeff VanHooreweghe  
21 One Market Plaza  
22 Spear Tower, Suite 3300  
23 San Francisco, California 94105  
24 Telephone: (415) 947-2046  
25 Facsimile: (415) 947-2099

26 By: /s/ Chul Pak

27 Attorneys for Defendants  
28 HITACHI CHEMICAL CO., LTD., HITACHI AIC  
INC., AND HITACHI CHEMICAL CO. AMERICA,  
LTD.